

1635 #9
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THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Xiao Xiao
SERIAL NO. : 09/845,416
FILED : April 30, 2001
FOR : DNA SEQUENCES ENCODING DYSTROPHIN MINIGENES AND
METHODS OF USE THEREOF
EXAMINER : Whiteman, Brian A. Art Unit: 1635
Commissioner for Patents
Washington, D.C. 20231

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RESPONSE

Dear Sir:

This is in response to the outstanding official action dated June 12, 2002.

Applicant respectfully elects Group I inclusive of claims 1-17 and 24-28.

This election is being made in response to the restriction requirement under 35 USC 121 to permit prosecution of the application on the merits to proceed relative to the elected group of claims.

Applicant, however, traverses the restriction requirement as regards Group II inclusive of claims 1 -2 and 14 - 15 which Applicant believes is necessarily included within Group I since claims 1-17 of Group I literally encompasses claims 1-2 and 14-15 in Group II. Accordingly, Applicant does not appreciate how the Examiner can differentiate between species included in the same claim of two separate groups. Claims 14 and 15 are dependent claims which depend from claim 1 and are contained in Groups I and II respectively. The argument that claim 1 lacks unity of invention would require claim 1 to be split into two

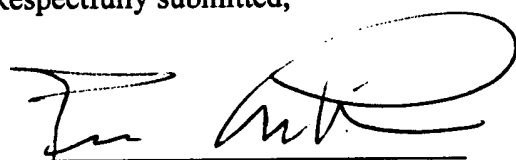
separate claims drawn to the two separate species which was not requested by the Examiner nor is it necessary since there is clearly an overlap between the nucleotide sequences of the two alleged species and further that any distinction between the dystrophine gene and the utrophine gene is not recognized by separate classification. Claim 1 is directed to an isolated nucleotide sequence and claims 2 and 14-15 are dependent thereupon.

Accordingly, the unity of invention allegation relative to claim 1 and the requirement for restriction between Groups I and II should be withdrawn. Reconsideration and withdrawal of the restriction requirement between Group I and Group II is respectfully solicited.

Respectfully submitted,

July 10, 2002

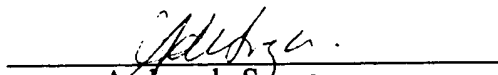
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CERTIFICATE OF MAILING

I hereby certify that this RESPONSE is being deposited with the United States Postal Service as First Class Mail and is addressed to the Commissioner for Patents, Box: Response, Washington, D.C. 20231 on July 10, 2002.


Audrey de Souza